



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201131026**

Release Date: 8/5/2011

Date: May 13, 2011

UIL Code: 501.32-00

501.33-00

501.03-30

501.30-01

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: March 25, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

C: Name of State
D: Date
E: Name of Director
F: Name of Director
G: Name of Director
H: Address

UIL:

501.32-00
501.33-00
501.03-30
501.30-01

Dear

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons explained below.

Facts

You are a corporation formed on D under the laws of the state of C. Your Articles of Incorporation indicate the purposes for which you were formed are educational and any purpose permitted to be exempt from taxation under section 501(c) or 501(d) of the United States Internal Revenue Code as now in or hereafter amended.

Letter 4036(CG) (11-2005)
Catalog Number 47630W

Your governing body is comprised of three individuals all listed as directors: E, F and G. E and F are husband and wife and G is their daughter. G is the Executive Director, works an average of 20 hours weekly and oversees your operations. You provide daily child care services from 6am through 6:30pm. You list as part of a mission statement partnering with families to promote health growth and development of children, the use of Creative Curriculum for family child care programs at the child care center, and individualized care and experience for the children. F provides care for the children and maintains general operations. E is a licensed foster parent and his responsibilities include upkeep of grounds and maintaining a safe environment. It is not known if care is or will be provided for any of E's Foster children.

Your Bylaws indicate officers of your organization to be a president, vice president, secretary and treasurer; however, these positions are not distinguished among your listed directors all of whom are related family members..

A daily schedule was provided showing activities in addition to your handbook outlining policies and procedures for day to day operations. You state you have a contract with a state agency for child care services. As per this contract you will assess and collect fees or co-payments from parents. Payment rates are set by the State agency. You will not accept personal checks for the fees and co-payments. All payments must be in cash or by money order made payable to F. For those who do not qualify under the State agency's program, the handbook lists your fee schedule which shows rates for infants, children ages 2 to 3, children ages 4-5, and for your after school program.

Your operations are conducted at H, which is owned by E and is the personal residence of E and F. Two of the children in the program are the children of G. Two other children in the program are grandchildren of E and F. You care for 6 children, of which 4 are related to board members. F provides care for the children and receives a salary. The capacity of the Home as per license granted is 8. Your license to operate the child care is in the personal name of F not in your name. You are a home based childcare facility and your State will not issue a license in a business name unless they operate from a center. Subsidies received from the state agency are paid directly to the childcare provider who is F.

For 2009 income was received from State agency subsidies, Parent's co-payments and service fees. More than 80% of the Income received was paid to F as salary. The balance was paid for general expenses including utilities, food, furniture and equipment for the child care and the child care facility as well as fuel for transportation costs to and from school for attendants. You also pay 10% of all utilities for the facility which is the Home of E & F.

You are receiving state subsidies for qualified child care. A significant portion (94%) of the subsidy payments paid to you is used to pay the salary of the care provider F, who is related to four of the six children receiving care at your facility, and a portion of the utilities and expenses for food and transportation for these related children. F is essentially receiving a salary which is paid from subsidy payments received from the state agency to watch her grandchildren in her own residence.

Law

Section 501(c)(3) of the Code provides for exemption from federal income tax for organizations that are organized and operated exclusively for charitable, educational, religious, or scientific purposes, no part of the income of which inures to the benefit of private individuals.

Section 1.501(a)-1(c) of the Income Tax Regulations defines “private shareholder or individual” to mean persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 69-175, 1969-1 CB 149: A nonprofit organization, formed by parents of pupils attending a private school, that provides school bus transportation for its members' children serves a private rather than a public interest and does not qualify for exemption under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert. denied 413 U.S. 910 (1973). The Fourth Circuit held that operating for the benefit of private parties constitutes a substantial nonexempt purpose.

Application of Law

You are not described in section 501(c)(3) of the Code because you are not organized and operated exclusively for section 501(c)(3) exempt purposes. Specifically, the facts above indicate that you are not operated for exempt purposes but rather for the private benefit to E,F

and G by providing child care services for their children and grandchildren, providing compensation to F to take care of F's own grandchildren, and operating out of the residence of E and F for which you pay a share of the costs. In addition you did not amend your Articles of Incorporation in order to meet organizational tests as requested. Therefore you do not meet the organizational test under 501(c)(3).

You are not described in Section 1.501(c)(3)-1(a)(1) because your organizing document, your articles of incorporation fails the organizational test for exemption under Section 501(c)(3) because the language is not limited to section 501(c)(3) purposes and assets upon dissolution are not dedicated for 501(c)(3) purposes. You do not meet the operational test for exemption because your income inures to your directors, and you are operated for the private benefit of your directors.

You are not described in Section 1.501(c)(3)-1(c)(2) because you are operated for the private benefit of E,F and G and your earnings inure to them.

You are not described in Section 1.501(c)(3)-1(d)(1)(ii) of the regulations. You provide home child care to six children, of which four are related to your governing body. You are receiving state subsidies for qualified child care. A significant portion (94%) of the subsidy payments paid to you is used to pay the salary of the care provider F who is related to four of the six children receiving care at your facility and to pay a portion of the utilities and expenses for food and transportation for these related children.. You provide care from the home of E& F. F is essentially receiving a salary which is paid from subsidy payments received from the state agency to watch her grandchildren in her own residence. You are therefore serving private rather than public interests.

You are like the organization in Revenue Ruling 69-175 supra. Four of the six children receiving care at your facility are related to board members, two are children of G, and all four are grandchildren of E and F. In this instance the provision of child care services basically services the children and grandchildren of the Directors and not the public at large.

You are also like the organizations in Better Business Bureau of Washington DC because your operations include substantial non-exempt purposes specifically, private benefit. As noted above, you were formed to provide child care services to relatives of the board members.

You are like Old Dominion Box Co because you are operating for the benefit of private parties, specifically E,F and G your directors.

Conclusion

Based on the above we conclude that you are not organized and operated for exempt purposes under section 501(c)(3) of the Code.

You do not meet the organizational test for exemption under section 501(c)(3) of the Code, since your organizing document does not contain the necessary purpose and dissolution clauses required to pass the organizational test for exemption under section 501(c)(3) of the

Code.

The facts show that you operate primarily for the benefit of your Founders/Board members. Of the six children who attend the child care four are related to the board members, the day care is operated out of the personal residence of a board member and the governing body consists of a husband and wife and their daughter.

The facts show that you were formed by E , F and G specifically to receive State subsidies for the childcare of children and grandchildren of E,F and G.

Therefore we conclude based on these facts that you are operated for private rather than public purposes and do not qualify for exempt status under Section 501(c)(3) of the Code.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892